APPENDIX A

SUPREME COURT OF NEW JERSEY
C-37 September Term 2002

IN THE MATTER OF THE TRUST CREATED MARCH 31, 1992 BETWEEN LAURA J. NILES, GRANTOR, and GEOFFREY M. PARKINSON, TRUSTEE;

ON PETITION FOR CERTIFICATION

TRUST CREATED MARCH 31, 1992, BETWEEN LAURA J. NILES, GRANTOR, and GEOFFREY M. PARKINSON, TRUSTEE; and

TRUST CREATED AUGUST 23, 1994, BETWEEN LAURA J. NILES, GRANTOR, and GEOFFREY M. PARKINSON, TRUSTEE.

(SERENA NILES—Petitioner)

To the Appellate Division, Superior Court:

A petition for certification of the judgment isn A-4644-99 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice at Trenton, this 5th day of September, 2002.

CLERK OF THE SUPREME COURT OF NEW JERSEY	CLERK OF THE SUPREME COURT

APPENDIX B

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-4644-99T1
A-4649-99T1

IN THE MATTER OF THE TRUST CREATED MARCH 31, 1992 BETWEEN LAURA J. NILES, GRANTOR, and GEOFFREY M. PARKINSON, TRUSTEE; TRUST CREATED MARCH 31, 1992, BETWEEN LAURA J. NILES, GRANTOR, and GEOFFREY M. PARKINSON, TRUSTEE; and

TRUST CREATED AUGUST 23, 1994, BETWEEN LAURA J. NILES, GRANTOR, and GEOFFREY M. PARKINSON, TRUSTEE.

On appeal from the Superior Court of New Jersey, Chancery Division, Probate Part, Warren County, Docket No. P.98-0435.

Argued: December 19, 2001—Decided: March 14, 2002

Before Judges Baime, Fall and Axelrad.

PER CURIAM

In these consolidated appeals, we consider the challenges of appellants, Serena Niles (Serena) and her son, Salvatore A. Bono (Salvatore), to the findings and conclusions of the trial court after a bench trial as memorialized in an amended final judgment entered on March 24, 2000.

The trial court found that Salvatore committed numerous acts of malfeasance, negligence and self-dealing as trustee under trusts created by Laura J. Niles, (Laura). The court permanently removed Salvatore as trustee and fiduciary to

Laura; removed Salvatore as a director of the Niles Foundation, Inc. (Niles Foundation);[1] and imposed surcharges against Salvatore.

The trial court also found that Salvatore and Serena exerted undue influence upon Laura, improperly causing Laura to execute documents that, inter alia, transferred control over her assets and affairs to Salvatore; and that Salvatore and Serena, working in concert, abused the trust and confidence Laura placed in them by, "among other things, attempting further changes to her will, using Laura's credit cards, checks, and cash for personal expenditures, obtaining improper and unauthorized compensation for Salvatore Bono, and using the funds in the trusts for wholly improper purchases[.]"

As a result of these findings, the March 24, 2000 amended judgment, in pertinent part:

> (1) Entered judgment against Salvatore and Serena in favor of plaintiffs Geoffrey M. Parkinson (Parkinson) and the Foundation on all allegations of undue influence contained in their complaints;
>
> (2) Declared as null and void:
>
> (a) the "Modification of Restatement of Trust Agreement" dated May 21, 1997,
>
> (b) the "Dismissal and Replacement of Trustee," dated May 21, 1997, for the Laura J. Niles Charitable Remainder Unitrust (CRUT I) and the Laura J. Niles Charitable Remainder Unitrust II (CRUT II),
>
> (c) the "Second Modification and Restatement of Trust Agreement" dated August 15, 1997; and

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[1] The Laura J. Niles Foundation, Inc., a non-profit corporation, was formed on or about March 31, 1992, is the respondent-appellant herein and shall be referred to as "Foundation." The Niles Foundation, Inc. was formed on or about August 15, 1997, is a New York non-profit corporation, and is referred to herein as "Niles Foundation."

(d) all other wills, codicils, trust agreements, trust amendments, documents affecting powers of attorney, and other testamentary or trust documents signed by Laura on or after January 1, 1997;

(3) Declared that the personal assets of Laura and the assets held in the trusts established by Laura shall be governed by the provisions of the trust documents, wills, codicils, and other testamentary documents in effect as of January 1, 1997; Reinstated Parkison as the executor, trustee, and attorney-in-fact for Laura;

(4) Reinstates Parkinson as the executor,

(5) Assessed a surcharge against Serena in the amount of $162,014;

(7) Ordered that Salvatore and Serena be jointly and severally liable to the Laura J. Niles revocable Trust created March 31, 1992, for counsel fees in the amount of $314,282; and

(8) Ordered that Salvatore and Serena be jointly and severally liable to the Foundation in the amount of $50,000 for compensatory damages.

The Foundation and Geoffrey M. Parkinson (Parkinson) cross-appeal, contending the surcharges and damages imposed in the March 24, 2000 amended judgment are inadequate.

Two of three trusts at issue were created by documents executed by Laura on March 31, 1992, which revised here prior will and established: (1) a revocable trust into which Laura placed most of her assets, the residuary beneficiary of which was the Foundation; and (2) a charitable remainder unitrust (CRUT I) into which Laura placed a small portion of her assets for income-production and tax-savings purposes. The third trust, a second charitable remainder unitrust (CRUT II), was created by Laura on August 23, 1994. Parkinson was

the appointed trustee under these three trusts from their inception, until removed by the documents executed by Laura on May 21, 1997.

Laura was born on July 1, 1909, was never married and had no children. Henry E. Niles (Henry) was Laura's younger brother; he died on December 27, 1997, a resident of New York. On November 13, 1992, Joseph J. Kunzeman, Esq. (Kunzeman), was appointed conservator of the property of Henry by order of the New York Supreme Court. Parkinson and Leland C. Selby, Esq. (Selby) are the proposed executors of Henry's estate under his will, probated in the Suffolk County, New York, Surrogate's Court.

Laura and Henry inherited a sizable fortune from their father's estate, which included thousands of shares of General Electric stock. Neither Laura nor Henry ever held a job and, until 1986, they lived together in their jointly-owned family home in Brightwaters, Long Island, New York.

In 1986, Laura purchased a home in Blairstown, New Jersey, situated on a twenty-five acre parcel on which she pursued her hobby of breeding show-quality poodles, and she maintained horses.

Parkinson was a long-term neighbor and friend of Henry in New York. Parkinson was retained as Henry's financial manager and gave Laura Financial advice for many years, becoming her portfolio manager in the 1990's when he worked for Shearson Lehman Brothers. Parkinson subsequently formed his own financial consulting firm, Greenwich Advisory Associates.

When Laura left the Brightwaters home in 1986, Henry was in declining physical and mental health. A friend of Laura's asked Serena if she would occasionally check on the well-being of Henry. Serena was approximately thirty years younger than Henry. Between 1986 and 1989, Serena and

Henry formed a relationship and would regularly dine together at a restaurant of which Serena was a part owner.

By 1990, Henry was incapable of handling his personal and financial affairs. In that year, Henry sustained a million-dollar loss at the hands of an unscrupulous stockbroker. As a result, Parkinson and Selby, Henry's New York attorney, suggested that Henry institute voluntary conservatorship proceedings to ensure that his property and money would be appropriately managed. Laura agreed that the appointment of a conservator would be in Henry's best interest.

After the conservatorship proceedings were instituted in New York, Parkinson and Selby learned that Serena and Henry were contemplating marriage. On April 19, 1991, Selby obtained an order from the New York court prohibiting the marriage between Henry and Serena; thereafter, Henry refused to participate voluntarily in the conservatorship proceedings. Serena obtained new counsel for Henry to defend against conservatorship proceedings, but was unsuccessful.

Kunzeman was appointed as Henry's conservator, and Parkinson remained as Henry's financial advisor. Notwithstanding entry of the restraining order, Henry and Serena married on November 4, 1992.

Kunzeman initiated annulment proceedings in New York, which were withdrawn when Serena entered into a post-nuptial agreement that would provide her $250,000 per year for every year she remained married to Henry and a $1 million bonus if she remained married to Henry for a period of five years. As previously noted, Henry died on December 27, 1997. Henry had no children.

Laura's 1988 will was drawn by James Lamb, a New Jersey attorney who represented Laura when she purchased the Blairstown home. That will made a number of specific bequests to charities and made Henry and Laura's god-daughter, Carol Boehn, income beneficiary for life of a trust

containing the residue of Laura's estate which, upon the death of the surviving life tenant, was to be divided equally among four individuals: Kara and Eric Leib, Elizabeth Langham and Michelle Lennen.

Following Lamb's advice, Laura executed a new will and trust documents that revised her estate plan. The new will, executed on March 31, 1992, directed her entire estate, except her dogs, into two trusts, both also executed on March 31, 1992. One trust was the CRUT I, into which Laura placed over $9.5 million of her assets, largely consisting of stocks; six-percent of the value of those assets was to be paid to Laura annually, and on her death, the principal and income were to got the Foundation. The second revocable trust created on March 31, 1992 paid Laura all of the net income of the trust estate and, at Laura's death, provided specific bequests for the named beneficiaries, with the Foundation named the residuary beneficiary. Parkinson was named trustee of both the CRUT I and the second revocable trust document, and Lamb was named as successor trustee of both trusts. Parkinson and Lamb, successively, were given medical power of attorney by Laura at the same time.

The trust agreements were subsequently modified. The first modification was executed on May 26, 1994, to provide for bequests to Gregory Drejka and Romana Baranska, Laura's housekeepers.

On August 23, 1994, Laura executed a document creating a second charitable unitrust (CRUT II), which was designed to yield her a higher income from the assets it contained. Parkinson and Lamb were appointed successor trustees of the CRUT II. The terms of the CRUT II were identical to the CRUT I, except that Laura would annually receive nine-percent of the net fair market value of the assets in the CRUT II. On that same date, Proctor as a named beneficiary and amending a provision for beneficiaries, Patricia Lennen and her son Kim.

In 1995, the trusts were modified in September and December, the first increasing the provision for Drejka and Baranska, and the second re-affirming Proctor's removal as beneficiary.

By January 1994, Laura had been diagnosed with a number medical problems. Her physician, Dr. Craig Buggelin, who had demented 84-year-old with multiple medical problems, "that included organic brain syndrome, cerebrovascular disease, hypertension, hyperchloresterolmia, cholelithiasis, chornic anemia, seizure disorder, peptic ulcer disease, and hemorrhoids. Buggelin asserted that "each of these problems is medically stable" as long as Laura took a series of medications, and followed a low sodium, low saturated fat meal plan at home. However, Dr. Buggelin observed that because of her organic brain syndrome, she could not be relied upon to take her medications properly or to follow through with the dietary restrictions. Consequently, he recommended that Laura be provided twenty-four hour nursing care either at home or in a chronic care nursing/ retirement facility.

By October 1994, Parkison was given the responsibility for handling Laura's checkbook and for paying her monthly expenses. Parkinson never signed the checks. Rather, the monthly bills were collected by Drejka and given to Parkinson, who would prepare the checks, return them to Drejka, who would then have Laura sign them.

Laura changed doctors in April 1995 and began seeing Dr. Leslie Schlessinger, who found "alert, oriented and seemed to be mentally competent" when he first saw her.

When Serena first started seeing Henry in 1986, Laura did not like her. Indeed, Laura filed a waiver and consent to the appointment of co-conservators for Henry at a time when Parkinson and Selby were seeking both a conservatorship and the injunctive relief against the contemplated marriage of Henry and Serena. Michael Selvaggi, the court-appointed

guardian ad litem for Laura, reported that Laura characterized Serena as "a con-artist" who was only marrying Henry for his money.

Nevertheless, Laura began spending more time with Serena and Henry after their marriage in 1992, celebrating holidays with them at Brightwaters, and spending time at Blairstown when Henry and Serena would visit. Serena began pressuring Laura purchase a condominium in Naples, Florida for use by Serena, Henry, Laura and other family members. Laura refused Serena's initial request. However, by November 1995, Serena had convinced Laura that the purchase would be in Henry's best interest, despite the advice of Lamb and Parkinson that the decision was not wise. Parkinson authorized the condominium purchase for approximately $695,000, but, for tax purposes, arranged for the purchase to be made by the revocable trust and required Henry and Serena to pay a monthly rent of $7,500.00.

On September 12, 1995, Laura and Kunzeman, as conservator of Henry, executed a deed conveying the Brightwaters property into the joint names of Henry and Serena.

Thereafter, Laura began to spend more and the more time with Serena, and then Salvatore, in Florida, New Jersey and New York. According to Serena and Salvatore, Laura became unsatisfied with Parkinson and his management of her affairs. Laura's nurses reported that in 1997 Laura began speaking ill of Parkinson, claiming she could no longer trust him and that Parkison was charging too much for his services.

According to Salvatore, Laura asked him to recommend an attorney. Salvatore directed Laura to his friend, Gerald Schrager, an attorney with New York Law firm of Fischbein Badillo, and to Gregory O'Connell, of the New York law firm DeFeis, O'Connell & Rose, with whom Salvatore had an attorney-client relationship.

In mid-April 1997, Laura contacted Schrager and asked him to review her estate documents. Shortly thereafter Laura met with Salvatore, Schrager and his law Partner Lawrence Gilberti, and Drejka, as which time they discussed Laura's estate plan. Laura told Schrager and Gilberti that she wanted to amend her estate plan and appoint Salvatore as her new trustee. Salvatore was present and participated in the meeting.

There was a second meeting between Laura, Gilberti and Schrager, where they discussed the individuals to whom Laura wanted to leave bequests; specifically money to Salvatore's children and the Florida condominium to Serena. Gilberti asked Laura to write down how much money each of Salvatore's children would receive and the types of charities her foundation would support.

On or about May 13, 1997, Salvatore brought written instructions to Gilberti, marked with Laura's initials next to each bequest and, at the end, in a third party's handwriting, was the notation $1 million to Salvatore Bono to take as I wish." The signature next to the language purported to be that of Laura. Gilberti told Salvatore that was a bad idea, and Gilberti prepared a draft of Laura's will that did not contain the million-dollar bequest to million-dollar bequest to Salvatore; however, the will contained bequests to each of Salvatore's four children.

The new will and trust documents were signed at Laura's home in Blairstown on May 21, 1997, in the presence of Gilberti, Schrager, Schrager's secretary Bridget Hitzler, another attorney, and a videographer who videotaped the proceedings. At that time, Dr. Schlessinger was asked to examine Laura. Although Laura had difficulty doing some of the tasks Dr. Schlessinger asked—Laura thought the year was 2000, not 1997, and was confused as to the day and date—Dr. Schlessinger felt that she knew where she was, why she was there, and what she wanted to do.

The May 21, 1997 will made Salvatore the executor of Laura's estate and placed the residue of her estate into her trusts. The May 21, 1997 modification to the March 31, 1992 trust agreement provided for the Florida condominium to be conveyed and distributed to Serena upon Laura's death. The trusts were modified to remove Parkinson and Lamb as trustees and replace them with Salvatore. A superceding medical power of attorney was given by Laura to Salvatore.

On July 16, 1997, Laura was hospitalized, suffering from dehydration due to vomiting and diarrhea. She was discharged one week later to the Brighwaters home to live with Henry and Serena. A few weeks later, Laura returned to Blairstown. However, while still at the Brightwaters home, Laura executed a "services compensation agreement" with Salvatore on July 25, 1997, under which Laura agreed to pay Salvatore on $100,000 per year for his services as trustee of the revocable trust, as well as providing Salvatore compensation for

> management and administrative services with respect to Ms. Nile's personal assets which are not included within the corpus of the Revocable Trust, including record keeping and oversight with regard to her personal checking accounts, regular reporting to her as to an inventory and valuation of her assets, oversight and coordination of her personal tax, legal and accounting affairs, and the rendering to Ms. Niles periodic reports on cash flows and projections of her cash needs.

The compensation was to be paid bi-annually on May 21 and November 30 of each calendar year, the initial fee payment of which was to be paid on the execution of the execution of that July 25, 1997 agreement.

Parkinson, Lamb and Selby refused to resign as directors of the Foundation. Laura then further modified her trust agreements on August 15, 1997, replacing the Foundation

with a new one, called the Niles Foundation, Inc. Those documents made clear that Salvatore's compensation was to be pursuant to their separate compensation agreement.

Three weeks later, on September 9, 1997, at an age of eighty-seven, Laura suffered what Dr. Schlesinger variously described as a "rather massive," or "moderately severe:" stroke. The stroke left Laura "quite debilitated. She was paralyzed on her left side; unable to swallow; required a feeding tube for nutritional purposes; her speech was impaired; and she suffered from congestive heart failure.

On September 17, 1997, Laura was transferred to the rehabilitation institute at Morris town Memorial Hospital where she remained for four weeks before being discharged to the Brighwaters home on October 23, 1997.

Prior to her stroke, Laura told Salvatore she wanted to replace her station wagon vehicle with another station wagon. Laura looked at several vehicles and then, a few days before her stroke, went with Drejka to a Mercedes dealership and placed a $1,000 deposit on a Mercedes station wagon vehicle that cost $56,000. However, on October 16, 1997, Salvatore wrote a check on Laura's account to Sovereign Motor Cars for $74,022 in connection with the purchase of S420 Mercedes Sedan for a total cost of $75,115.50. Prior to Laura's stroke on September 9, 1997, Salvatore had spoken with Schrager about the purchase of a Mercedes Benz vehicle; Schrager advised against it, but Salvatore claimed it was something Laura wanted.

On September 18, 1997, Salvatore advised Gilberi that Laura wanted Salvatore to have a $50,000 raise in his compensation as trustee. On September 19, 1997, Gilberti drafted an amended compensation agreement and wrote to Salvatore that he first wanted to confirm that this was Laura's intent. Although Salvatore became irate at this position, Gilberti and Schrager maintained they attend to execution of

the modification to the agreement until they confirmed its accuracy with Laura; that never occurred. However Salvatore independently obtained Laura's signature on the amended compensation agreement. As of July 1998, Salvatore had paid himself $200,000 in compensation as Laura's trustee, which was $ 50,000 in excess of even what the amended compensation called for.

Two days before Henry died, Salvatore's secretary drew a check on Laura's account in the amount of $20,460 for the purchase of Cartier watch, purportedly a Christmas gift from Laura to Henry. Laura was not present when the watch was presented to Henry and Henry was so sick he was unable to open the package or respond in any way.

After Henry's death, Salvatore requested Gilberti to draw a new will for Laura that would remove the charities and leave the entirety of Laura's residuary estate to Serena. On January 16, 1998, Dr. Schlessinger saw Laura at Gilberti's request. Dr. Schlessinger administered a standard mental examination, which Laura failed. According to Dr. Schlessinger's testimony, Laura made seven significant errors and experienced great difficulty expressing herself. Dr. Schlessinger concluded Laura was not mentally competent and so informed Gilberti and Salvatore.

After Henry's death, the month living-expense payments from Henry's conservator ceased. Thereafter, Salvatore issued a series of checks from Laura's account to pay household expenses at the Brightwaters home. Additionally, between June 1997 and August 1998, over $47,000 was charged to Laura's credit cards, the majority of which Salvatore was unable to account for or explain. Salvatore acknowleged those purchases could have been made by Serena, since she had access to Laura's credit cards.

On January 20, 1998, Parkinson filed a three-count verified complaint and accounting in the Probate Part, seeking: (1)

allowance of the settlement of this account; (2) allowance of investment advisory fees; and (3) appointment of a guardian ad litem for Laura. On January 22, 1998, the Warren County Surrogate issued and order to show cause with respect to the accounting and appointed Michael S. Selvaggi, Esq. as guardian ad litem for Laura, directing that Selvaggi issue a report concerning the allegations of undue influence of Laura by Salvatore and Serena, as set forth in the third count of Parkinson's complaint.

By answer dated March 6, 1998, Salvatore objected Parkinson's accounting and filed a counterclaim seeking dismissal of the complaint; denial of the request for investment advisory fees; the surcharge of Parkinson's for improper disbursements from the trusts; and for excessive fees and attorneys' fees and costs.

On April 6, 1998, Judge Seybolt ruled Salvatore had no standing to challenge Parkinson's accounting.

On May 15, 1998, Selvaggi filed and eighty-eight page report with the court, containing summaries of his interviews with twenty-nine individuals and fifty exhibits. Selvaggi recommended that the Probate Part conduct a plenary hearing on the undue influence issue; that the court accept Parkinson's accounting as submitted; and that Selvaggi be continued as Laura's guardian ad litem.

On June 23, 1998, the court entered an order that allowed the accounting as submitted; awarded the investment advisory fees as requested, as well as attorneys' fees and guardian ad litem fees; ordered a hearing on the issue of undue influence; required a formal accounting by Salvatore with respect to his services as trustee from May 21, 1997, to the present; and retained Selvagi as Laura's guardian ad litem.

On July 31, 1998, Salvatore filed a complaint in settlement of his account and his accounting as trustee, which he amended on August 24, 1998. On August 27, 1998, Park-

inson filed exceptions to Salvatore's accounting and sought removal of Salvatore as trustee and the surcharge of Salvatore for improper expenditures.

On September 18, 1998, the court heard argument on motions brought by Parkinson and the Foundation to have Laura declared incompetent, to have a guardian appointed for her, and to have Salvatore removed as trustee. On September 24, 1998, the court entered an order that declared Laura an incapacitated person; appointed Selvaggi her guardian ad litem and temporary trustee; removed Salvatore as trustee pending final determination of the issues of the merits; and ordered Salvatore make a supplemental accounting of all trust activities from May 31, 1998 to the present.

On December 18, 1998, Salvatore filed the supplemental accounting, Parkinson and the Foundation filed a series of exceptions to Salvatore's accounting.

On January 19, 1999, the Foundation filed a verified complaint in the Probate Part, seeking a determination that Serena and Salvatore exerted undue influence upon Laura to revise the trust agreements in their favor, to obtain unfettered use of Laura's credit cards, and to devise Laura's Florida property to Serena. The complaint requested and order compelling appropriate reimbursement.

A consent order was entered on March 12, 1999, consolidating the Foundations's complaint with the complaint previously filed by Parkinson.

The court bifurcated the issues into two hearings. One hearing focused on Salvatore's accounting and whether he should be permanently removed as trustee, and the second hearing focused on the issue of undue influence. The first hearing commenced on April 21, 1999 and continued on May 3, May 4, 1999, July 12, 13, 14, 199 and concluded on July 15, 1999.

On June 29, 1999, while the accounting and removal hearings were underway, Salvatore filed a pro se complaint in the Eastern District Federal Court of New York against numerous individuals involved in the New Jersey Probate Part trial, including Judge Seybolt, Parkinson, Selvaggi, and all participating legal counsel. Salvatore's complaint charged the named defendants with fraud and racketeering, among other claims. On defendants' motion, the federal court dismissed Salvatore's action by order entered on September 20, 2000.

On July 12, 1999, counsel for Salvatore advised the court that Salvatore had decided to seek a stay of the proceedings before the court from the federal court and would not be present. Additionally, counsel for Salvatore's filing of the federal action. Salvatore's counsel also moved to be relieved. Judge Seybolt denied both applications starting, in pertinent part:

> The issue are still open. And in spite of efforts by [Salvatore] to try to get me into a position whether I overstep myself or decide an issue before the issue is ready to be decided or overreact to react to what he has attempted to do both is his previous letter and in his suit in the Federal District Court, I recognize he has a right to seek relief in the Federal District Court.
>
> I don't feel he has the right to derail this proceeding. And if I were to grant your motion at this point I would derail this proceeding and postpone it. . . . I think this matter gone on long enough and I feel that we ought to get these issues resolved. We have a trial date in September, which I hope to follow on the undue influence issue. I hope we can get through this issue. We have set the entire week aside and a really tight schedule to get the issue of the accounting decided. I intend to move forward with it.

So as far as allowing you to withdraw at this point, I don't think you comply with Rule 1:11-2. I recognize that is puts you in a very difficult position. . . . However, I'm going to deny your application to withdraw at this point because we are ready to go today.

. . . .

I don't feel, and I don't feel that I am today biased against [Salvatore]. I have tried to up to now and I will continue to try to give him every opportunity to present his side of the case, but I am going to decided it and if somebody doesn't like it that's why we have and appeal procedure with respect to that. But I'm not going to put this off, we have set the entire week aside for this hearing to drop a box of papers off on me last Tuesday, with the idea to postpone this case, won't work, I will not yield to that particular tactic.

I will give [Salvatore] his fair day in court, if he chooses to waive his appearance, if he chooses to waive his appearance, if he chooses to waive having counsel. If he wanted to have another counsel standing here representing him today he should have decided that before last week and made that move. He chose not to be here today. He chose to be someplace else. I am not interested in where, but we are proceeding. . . .

. . . .

But, I'm going to decide it based on what's submitted to me and despite the fact that he is trying his best to get this case removed from this courtroom, he is not successful at it and I don't expect somebody to walk in here five minutes to get a full grasp of the case and decided whether or not I am biased or unbiased. . . .

. . . .

> I think . . . after my communication to you . . . in effect his not appearing today knowing that he is in the process of . . . examination . . . he is in contempt of court. . . . I will have to refer the matter to the prosecutor and have the matter presented to another judge who will then decide whether his failure to appear today is in contempt of court. I am electing not to do that, but I do state on the record that I fell that that is showing some contempt of court. I am going to overlook that and in the interest of fairness proceed with the idea that he may have erred in judgment in deciding not to come here today[.] . . . I want to proceed in as fair a matter as I can as to [Salvatore], but also as to the other parties in this case.

An order memorializing the denial of Salvatore's recusal motion was execute on July 29, 1999. Salvatore failed to appear at any of the subsequent hearings; however, his counsel participated and called witnesses.

On August 3, 1999, Judge Seybolt issued a comprehensive written opinion with respect to Salvatore's accounting and removal as trustee. The judge found numerous instances of Salvatore's self-dealing as Laura's trustee, concluding they constituted a breach of his fiduciary duty to Laura. The judge permanently removed Salvatore as Laura's trustee and surcharged Salvatore $361, 800 for his misuse of trust funds, and assessed $1, 984.34 in costs. In reaching those conclusions, Judge Seybolt stated, in pertinent part:

> N.J.S.A. 3B:14-21 provides that the Court may remove a fiduciary from office when. . . .
>
> > c. he has embezzled, wasted or mis-applied any part of the estate committed to his custody, or has abused the trust in confidence reposed to him.
> >
> > [Salvatore], after spending the better part of two days on the witness stand at this plenary hearing and

having failed to complete that testimony, took it upon himself to refuse to appear in Court for the continuation of the hearing and thereby obstructed the right of counsel for plaintiffs to complete his examination. That conduct is sufficient for the Court to declare a default on that part of [Salvatore] and remove him based upon his failure and refusal to appeal . . . . Nevertheless, in the interest of fairness due the fiduciary and in an effort to reach the merits of [Salvatore's] accountings, the Court will continue to review and comment on the merits of the case.

Throughout [Salvatore's] testimony . . . . he maintained that he was at all times, carrying out the instructions of Laura. The issue of undue influence has yet to be tried and a hearing on that issue is scheduled for September of 1999. In the hearing recently conducted by the Court, the Court will consider [Salvatore's] actions during his trusteeship from May 22, 1997 to May 31, 1998.

[Salvatore], ten days after Laura suffered a stroke on September 9, 1997, called Gilberti and told him that Laura wanted to give [Salvatore] a 50% raise from $100,000 to $150,000. Gilberti prepared the draft of the amended contract and sent it to [Salvatore] with a note indicating that Gilberti had to confirm the matter with Laura. [Salvatore] became furious and screamed at Gilberti's secretary and Gilberti and eventually hung up the phone on him. Schrager advised Gilberti that he had told [Salvatore] not to execute the contract until Fischbein Badillo conferred directly with Laura. [Salvatore] completely disregarded this instruction and arranged, with the help of Drejka and his mother, Serena, to obtain Laura's signature to the amended contract. The amendment was backdated to September 1, 1997 and included an

overlapping period between the first and second compensation agreement from September 1, to November 30 which resulted in [Salvatore] receiving $200,00 for the year of his service. [Salvatore] devoted hundreds of thousands of dollars out of Laura's trust for purchases with Laura's credit cards, checkbooks and cash during a period of time when she was recovering from her stroke. These included purchases from Saks 5th Avenue, Nordstrom's, Bloomingdale's, Fortunoff, Gemelli, Fine Foods, Lord & Taylor, Brooks Brothers, Polo, Ralph Lauren, Sterns, etc. There is no dispute that Serena made most of these charges using Laura's credit cards, without Laura being present and would sign Laura's name to the receipts. Although both Serena and [Salvatore] claim that these purchases were for necessities for Larua, [Salvatore], in his testimony, and Serena. In her deposition, failed to support his claim

From September 1, 1997 until May 31, 1998, $49,500 in cash was withdrawn from Laura's personal checking account during which time Laura's medical condition was significantly diminished. These checks were signed with Laura's signature stamp, one of which was kept in Blairstown with Drejka and the other at Brightwaters with Serena. . . . Both Serena and [Salvatore] admitted that they used cash for their own personal expenditures. [Salvatore] has given no explanation as to what was purchased much less why the Court should approve his use of Laura's case. . . . [Salvatore] spent $12,046 out of Laura's personal checking account to pay for living expenses in Brightwaters. [Salvatore] claims that Laura paid these monies voluntarily, but it is hard to believe at the time of these expenditures that she knew or authorized them.

. . .

[Salvatore] purchased a $20,000 Cartier watch with Laura's funds from a jewelry store with a note indicating it was for her brother. [Salvatore] claims that Laura picked out this watch on a shopping trip to Saks 5th Avenue accompanied by Serena and Drejka. The testimony of Drejka disputed the claim of [Salvatore] and Serena. It was agreed that the watch was given to Henry on December 25, less than 48 hours before his death when it was apparent to everyone that Henry was dying. [Salvatore] paid out of Laura's trust monies, legal fees of $549, 726. This includes the payment of $314,282 to Fischbein Badillo in spite of the fact that no Affidavit of Services was ever submitted in support of these fees as required by *R.* 4:42-9(a)(2). Fischbein Badillo continued to carry out the instructions of [Salvatore] in spite of the fact that it was clear to them based upon Dr. Schlessinger's examination in January of 1998 that she was not competent to make financial decisions . . . . In spite of their concerns with respect to [Salvatore's] request for a new Will and in spite of her obvious lack of capacity, Fischbein Badillo nevertheless drafted the new Will. At the very least, this is a breach of the fiduciary duty of [Salvatore] as a director of the New Niles Foundation. He attempted to divert the estate of Laura from the charities to his mother, Serena. It is obvious to the Court that once Dr. Schlessinger had released his conclusion of lack of competency in January of 1998 and with no contrary opinion being obtained by Fischbein Badillo, that from that period on the services that they continued to render in this litigation were rendered for [Salvatore] individually and not for Laura . . . . [Salvatore's] actions were obviously not for the bene-

fit of Laura, but for the benefit of himself, his mother and his children. . . .

[Salvatore] paid out legal fees of $106,804 to the firm of DeFeis, O'Connell and Rose, a New York firm that was denied admission pro hac vice by this Court on April 9, 1998 and therefore, had not authorization to represent [Salvatore] in New Jersey. . . .

[Salvatore] incurred accounting and investigation fees of $134,285 for accountants and for private investigators to pursue Parkinson after Parkinson had been discharged and his accounting approved by the Court. Therefore, the Court concludes that these monies were used to attack Parkinson for bringing this action rather than to benefit Laura.

Substantial reductions in principal were made by [Salvatore] as trustee to meet the expenses set forth above. This in spite of the fact that the three trust instruments provided that principal could not be used without the written request of Laura. No evidence has been presented to the Court that that was ever obtained by [Salvatore] in spite of these substantial expenditures of principal.

There was $51,000 missing from [Salvatore's] accounting with respect to the Tilo Farms, the business name of Laura's Blairstown residence. Since [Salvatore] elected not to appear at the continuation of the plenary hearing in July, 1999, there was no opportunity to question him on this item. Schrager testified at the plenary hearing that his treatment of compensation agreement in drawing down $200,000 in compensation for slightly more than a year of service was a "breach of fiduciary duty."

For all these reason, the court concludes that [Salvatore] should never again be a fiduciary with

> respect to the trusts or the estate of Laura. For the reasons set forth above, he continued to misuse his relationship to further his own needs and those of his family members under the false premise that he was acting at the request of Laura.
>
> . . . .
>
> The Court finds the conduct of [Salvatore] inexcusable and reprehensible and his permanent removes [Salvatore] at trustee of the revocable trust, Crut I & Crut II of Laura, as Attorney-in-Fact for Laura and as director of the Niles Foundation.
>
> [Citations omitted.]

In further analyzing the misappropriations, the judge assessed surcharges against Salvatore in the amount of $361,800. An order and judgment memorializing those findings and conclusions was executed on August 24, 1999.

Thereafter, Salvatore refused to attend scheduled, court-ordered depositions and refused to attend scheduled, court-ordered depositions and refused to appear at the undue influence trial that commenced on September 21, 1999. The undue influence trial continued on September 22 and 23, 1999, October 25, 26, 27 and 28, 1999, November 1, 3, 4, 15 and 16, 1999, and concluded on November 17, 1999. Based on Salvatore's refusal to provide discovery and his refusal to attend the trial or be available as a witness, the judged ordered that Salvatore's pleadings be struck and default be entered against him.

On January 10, 2000, Judge Seybolt issued a written decision concluding, *inter alia*, that there was "no clearer case of undue influence than the one presently before this court." The judge declared all modifications of the three trust agreements executed on May 21, 1997, as well as all amendments to Laura's will and powers of attorney executed thereafter, to be "null and void." The court reinstated all

fiduciaries appointed by Laura prior to May 21, 1997, and appointed Parkinson as Laura's guardian. The findings and conclusions of the judge were memorialized in an order for judgment entered on January 21, 200.

In reaching these conclusions, Judge Seybolt stated, in pertinent part:

> Upon Laura's return to the Blairstown, [Salvatore] . . . employed Gerald Schrager and Larry Gilberti . . . to do legal work regarding Laura's estate. The existing trust documents were brought to Blairstown by Schrager and Gilberti along with [Salvatore] and reviewed with Laura Niles on April 1, 1997 . . . . For the most part, this interview showed that Laura could respond to questions and did know the persons she had previously included in her estate plan. Laura expressed an interest in transferring the Florida condominium to Serena although she was clear that she did not want to retain Parkinson, Selby or Lamb. She was not questioned to any extent for the reasons. Although Laura's answer for the most part seem responsive, neither Gilberti nor Schrager pursued the reasoning for the changes and never, outside the presence of [Salvatore], discussed his qualifications to be trustee of her rather large estate or director of her foundation . . . . When asked why she was so made at Mr. Parkinson , her response was, "Because he cheated me." When you asked what makes you believe he cheated you, she responded, "Because there is not trust made of Carol's kids and he said he did. I was very surprised at this reaction." She further indicated that "He is not very trustworthy. I was so surprised." At the conclusion of the minutes, Gilberti asked Laura: "How did you become aware of Mr. Parkison 'cheating' you?" Laura responded, "Mrs. Bono, Mrs. Niles, she said that he has not been on the up and up. She's been in business. She knows." It was obvious to the Court at

this point that Serena and [Salvatore] had successfully worked their influence.

On May 8, 1997, an estate planning questionnaire was prepare and sent to Laura Niles. It was completed and sent back with handwritten changes; obviously not in her handwriting. A rather startling additions was included in the last page of the answer [.] . . . In someone's handwriting other than Laura Niles, Salvatore Bono was to receive $1,000,000 to take as he wished. It was testified by Mr. Gilberti that he and Schrager recommended against this bequest as it would not look good. The word "void" was added over the note on this page by someone else in different handwriting from the bequest.

Documents were prepared and presented for signature by Laura Niles at Blairstown on Wednesday, May 21, 1997. A transcript was made of this session consisting of 73 pages and a videotape was also made of this session. Dr. Leslie Schlessinger was called upon to appear and give his opinion about Laura's competency. . . . [Salvatore] was not present in the room as far as the transcript and the videotape show. Laura asked for [Salvatore] so the Court concludes that he was present that day in Blairstown and had the opportunity to speak to Laura before the session began.

. . . .

Laura's competency on May 21, 1997 is not an issue, but the undue influence of Serena and [Salvatore] is very much and issue. A review of the transcript and videotape of May 21, 1997 indicates that Laura was answering questions, but was not giving directions . . . . Most of Laura's answers to Mr. Gilberti's questions were one word answers, usually "yes." On occasion, she would ask for [Salvatore]. She signed the documents as

she was told. A view of the videotape indicated that Laura was frail and elderly at the time of the signing of the documents on May 21, 1997 and very cooperative in completing the task.

. . . .

Upon the instructions of [Salvatore], a second modification and restatement was prepared for execution by Laura on August 15, 1997 at the offices of Fischbein, Badillo in New York City. A transcript was prepared of that meeting. The officers and directors of Laura J. Niles Foundation, Inc. had not resigned in accordance with the instructions sent by Schrager and Gilberti under a very weak signature of Laura on May 21, 1997. The purpose of the modification of August 15, 1997 was to replace the Laura J. Niles Foundation with a new foundation. When asked by Mr. Gilberti the reason for the change, Laura replied, "Well, because there is a certain trustee that we feel he wants too much, that he is not being quite honest." Note the reference to "we feel".

. . . .

Now before this Court is the issue of the alleged undue influence of Serena Bono and [Salvatore] in connection with the 1997 amendments to the Laura Niles three trusts, her last Will and Testament and the new medical power-of-attorney. Testimony was presented over twelve days . . . with closing arguments on November 17, 1999. This Opinion of the Court now deals with the remaining issue. [Salvatore] never appeared at this hearing and on the first day of testimony, his attorney moved to be relieved and his request was granted. [Salvatore] was never thereafter heard from and is in default with respect to the allegations of this undue influence. Serena Bono was represented . . . and she appeared and gave testimony in here behald.

. . . .

In determining whether a particular individual has been impelled to act under duress, all attendant circumstances including the age, capacity and relation of the parties must be considered as well as the exigencies of the situation in which the alleged victim finds himself.

In [Matter of will of Liebl, 260 N.J. Super. 519 (App. Div. 1992), certif. denied, 133 N.J. 432 (1993)], the Court summarized the two elements necessary to give rise to a presumption of undue influence. The first being a confidential relationship between the testator and a beneficiary where the trust is reposed by reason of the testator's weakness or dependence or where the parties occupy relations in which reliance is naturally inspired or the fact exists. The second element must be the presence of suspicious circumstances which in combination with the confidential relationship with shift the burden of the proof to the proponent. Such circumstances need be no more than slight.

. . . .

In the late 1980's, both Henry Niles and Laura Niles were in their late 70's and were relying on others for assistance in their daily living and in their financial decisions. Henry, although two years younger than Laura, was weaker physically than Laura, had no social life and rarely left his home in Brightwaters. Laura, on the other hand, attended dog shows regularly, had an apartment in New York City, a circle of friends and an interest in horses as well as dogs. However, Laura had persons caring for her, her Blairstown property and her animals on a full-time basis. She no longer drove a car and was becoming more dependent upon others.

. . . .

By 1997, Laura was 86 ½ years of age an dependent on the full-time nurses and the full-time assistance of Gregory [Drejka] and Romana [Baranska]. She went to the Florida condominium to stay with Henry and Serena during February and March of 1997. While there, she received news of the sudden suicide death of her goddaughter and favorite, Carol Boehm. This was very upsetting to Laura and at this time when this frail, elderly woman was most vulnerable, Serena, with the help of her son, [Salvatore], who also visited Florida at this time, increased the negativism directed at Parkinson and the need for someone else to look into her finances. Upon Laura's return to Blairstown at the end of March, 1997, [Salvatore] had arranged for attorneys at Fischbein, Badillo (Schrager and Gilberti) to remove Parkinson and to make extensive changes in Laura's estate plan. Notes of the meetings with Gilberti and Schrager confirm that Laura now, in her weakened condidtion, had a state of mind that Parkinson was dishonest and had been stealing from her. This confirms that she was taken advantage of in her weakened condition, to turn her mind away from her trusted advisor, Parkinson, and to place that trust into someone now. Serena had told Laura that with her business experience, she recommended her son, [Salvatore], who had now befriended Laura and convinced Laura that he was the one to handle here financial decisions. This was done without any know qualifications of [Salvatore] to be placed in a position to handle suck a large amount of investments. Numerous documents were prepared and presented to Laura for execution on May 21, 1997. The videotape clearly shows that Laura was in a weakened condition and she had very little input into these wholesale changes presented to her at that time. Her answers as previously indicated were one word answers and showed very little, if any, original thought. Dr.

Schlessinger was present on May 21st and although he found her competent enough to know what she was doing, he concluded that she was suffering from some degree of dementia. He found her to be a frail, elderly woman who relied on maximum help with others with her activities of daily living and had significant impairments with respect to making complex decisions. Nevertheless, Laura signed all the documents of her assets from Parkinson to [Salvatore] and made numerous other changes previously outlined in this Opinion.

After, poisoning Laura's mind about Parkinson, [Salvatore], the one person whom Serena recommended that Laura place her confidence in, began to include himself as an object of her bounty.

The Court concludes that the apparent age and frailty of Laura Niles, coupled with her vulnerability and complete dependence on others, created a confidential relationship with her sister-in-law, Serena and Serena's son, whom Serena had recommended as the proper person to give her advice. Witnesses from . . . Brightwaters, Blairstown and Florida convinced the Court that Serena dominated these households and those that worked in the household of these three localities. Laura was included in this dominance when both were residing at the same locale. Serena's dominance, coupled with Laura's weakness, creates the confidential relationship. Examples of the suspicious circumstances are referred to throughout this Opinion. When Laura returned from Florida Blairstown at the end of March, (1997), Serena ordered through Greg Drejka that Parkinson was not to communicate with Laura. True, Laura never attempted to call Parkinson, but at this time, she never made her own phone calls, but had others call for her and she was now convinced that Parkinson had been deceitful and was cheating her. The attempt by (Salvatore) to include

himself in Laura's trust for $1,000,000 and his children for $500,000 each, clearly shows the intention of [Salvatore], who took complete charge over Laura's financial situation. The court finds that not only has the plaintiff satisfied the burden of proof, but has provided the Court clear and convincing evidence which has not been rebutted that undue influence occurred and that all documents executed by Laura Niles beginning with the execution of the ten documents on May 21, 1997 and any documents executed in preparation for those modifications, are void as a matter of law, on the basis of undue influence.

. . . .

Laura suffered a severe stroke on September 9, 1997 and upon release from rehabilitation several weeks later, was taken to Brightwaters to live under Serena's dominance. Serena, who requested funds to care for Laura , had access to Laura's credit cards and through here son, [Salvatore], access to Laura's checking account. A $ 70,00 white Mercedes sedan was purchased by [Salvatore] of Laura, who hadn't driven in years and who thought it was a novelty.

Henry Niles died December 27, 1997 and Serena was faced with the termination of the monthly living allowance. Further amendments to the trust were contemplated by Serena and [Salvatore] and Dr. Schlessinger was then called in. Dr. Schlessinger, in his January, 1998 exam concluded that Laura J. Niles was no longer competent to execute documents with respect to her assets and her estate. This did not discourage Serena and [Salvatore]. [Salvatore] then requested that Gilberti prepare a third modification of the trust agreement which totally eliminated the Foundation as the residual beneficiary and distributed the residue of her estate (in excess of $20,000,000) outright to Serena. Gilberti admitted that he never conferred with Laura on this

> change, but nevertheless drafted the third modification. He began to have his doubts when [Salvatore] would not agree to confirmation from Laura and this third modification was never executed. This however clearly shows the state of mind of Serena and [Salvatore] who stand accused of undue influence of Laura. In addition, [Salvatore], who had criticized Parkinson for the management fees he had taken from the trust, managed to get an amendment of his services contract with Laura increased from $100,000 to $150,000 and in fact, took $200,000 in the last full year that he served as trustee.
>
> It is this Court's conclusion that there is no clearer case of undue influence than the one presently before this court.

A judgment memorializing the findings and conclusions in Judge Seybolt's January 10, 2000 written opinion was entered on January 21, 2000. In addition, that judgment permitted plaintiffs to file a surcharge and damages application for judgment against Serena and Salvatore for counsel fees and compensatory damages.

Pursuant to that judgment, Parkinson and the Foundation moved against Serena and Salvatore for imposition of attorneys fees, costs and compensatory damages. The trial court granted the applications and entered and amended final judgment on March 24, 200, assessing a total superceding surcharge against Salvatore in the amount of $805, 727; a surcharge against Serena in the amount of $162,014; $314,282 for legal fees incurred in connection with the litigation, for which Serena and Salvatore were made jointly and severally liable; and $50,000 in compensatory damages for which Salvatore and Serena were also jointly and severally liable.

Plaintiffs had sought legal fees and compensatory damages against Serena and Salvatore in the total amount of

$2,987,106, consisting of legal fees and costs of $2,199,077, and compensatory damages in the amount of $788, 029. In considering plaintiffs' application and rendering his decision at the March 24, 2000 hearing Judge Seybolt stated, in pertinent part:

> This court will first address the issue of compensatory damages. The court is convinced that [Salvatore] should not be permitted to retain the $200,000 in compensation for being trustee, because he attained the position as a result of undue influence.
>
> As to the other requested compensatory damages, the court affirms its decision in the earlier opinion. The court surcharged $50,000 against Salvatore Bono for improper credit card, cash and check expenditures, because those funds were used for Mr. Bono's personal gain. Serena Niles had access to those funds as a result of her undue influence and should not be able to benefit. In the August 3, 1999 opinion, the court found that much of the credit car use was not for Laura, but was for Serena and the Bono family. These sums were used with gross carelessness or indifference to Laura's wishes. Since both [Serena] and [Salvatore] benefitted from those charges . . . they shall be jointly and severally liable for that $50,000. This is not $50,000 in addition, 50,000 already surcharged against [Salvatore] is the same $50,000, jointly and severally.
>
> The court charged [Salvatore] 35,000 for investigation fees. There has been no demonstration that Serena Niles directed Salvatore Bono to initiate this investigation. Therefore, Serena Niles will not be surcharged for those fees. [Salvatore] will remain surcharged for those.
>
> The court charged [Salvatore] 35,000 for investigation fees. There has been no demonstration that Serena Niles directed Salvatore Bono to initiate this investigation.

Therefore, Serena Niles will not be surcharged for those fees. [Salvatore] will remain surcharged for those.

In the earlier opinion, the court did not surcharge [Salvatore] for accounting fees. However, based upon the findings of undue influence, [Salvatore] . . . should be charged $99, 276 for those accounting fees . . . However, there has been no finding that [Serena] directed [Salvatore] to do these actions. Therefore, these funds will not be surcharged against [Serena].

In the earlier decision, the court reserved decision on whether to surcharge [Salvatore] for the Fischbein Badillo legal fees . . .

It is my understanding that they are not seeking . . . additional counsel fees from the trust, but nevertheless were paid sums of money for their alleged representation of Laura Niles. These fees arose from amendments made to the trust and trust amendments resulted from Salvatore Bono and Serena Niles' undue influence. Therefore, the Fischbein, Badillo fees shall be surcharged to Serena Niles and Salvatore Bono jointly and severally.

Plaintiff[s] move for Salvatore Bono and Serena Niles to be surcharged for all of the legal fees resulting from this case. Based on the [In re Landsman, 319 N.J. Super, 252 (App. Div.), certif. denied, 161 N.J. 335 (1991)] decision this court believes that it is authorized to compel [Salvatore] and [Serena] to pay their own legal fees, because it would be inequitable for the court to conclude that the estate should have to pay the legal fees for the individuals who unduly influenced. Therefore, Serena Niles, will be surcharged $162,014 for the time fees of the Novice firm [, her attorneys].

[Salvatore] has previously been surcharged $106,804 for the frees of DeFeis, O'Connell and Rose. In the

earlier proceeding the court declined to surcharge [Salvatore] for the services provided by Sills, Cummis. However, since those fees were generated to defendant [Salvatore's] position gained as a result of undue influence, the court will now surcharge [Salvatore] $128,640 representing Sills, Cummis fees and the $236,007 for the Cohn Lifland fees. These fees directly resulted from [Salvatore's] attempt to defend his undue influence. This sum should not be paid by trust.

Mr. Parkinson also moves for [Serena] and [Salvatore] to be surcharged for the attorney's fees of other parties in this case. This Court does not find any basis in Landsman to shift the attorney's fees from the other parties to [Salvatore] and [Serena]. In Landsman, the Appellate Division did not state that a party found to have committed undue influence is bound to pay the attorney's fees of all parties involved. The court stated the party found guilty of undue influence must bear its own legal expenses.

. . . .

I am not surcharging [Salvatore] the $19,000 [loss] for the Mercedes. Because it was purchased for Laura Niles at a time when [it] becomes property of the estate, therefore, it becomes an asset of the trust. Whether it was lost value, whether it was a lousy investment, perhaps, I am not going to surcharge $19,000.

[Other citations omitted.]

The amended final judgment entered on March 24, 2000, memorializes the final rulings of Judge Seybolt. In August 1998, Laura slipped into a coma from which she never recovered.

On appeal, Salvatore presents the following arguments for consideration:

POINT I

THE SURCHARGES, ATTORNEYS' FEES AND DAMAGES IMPOSED AGAINST BONO IN THE FINAL JUDGMENT MUST BE VACATED BECAUSE PARKINSON LACKED STANDING TO OBJECT TO THE ACCOUNT AND HE HELD NO CLAIM THAT WAS RIPE FOR ADJUDICATION. THE ORDER SETTLING PARKINSON'S ACCOUNT MUST ALSO BE VACATED.

POINT II

THE FINAL JUDGMENT INVALIDATING THE MAY 21, 1997 LAST WILL AND TESTAMENT OF LAURA J. NILES WHILE SHE WAS ALIVE MUST BE VACATED AS THAT CLAIM WAS NOT RIPE AND THE ORDER REMOVING BONO AS TRUSTEE OF THE NILES FOUNDATION, INC., A NEW YORK NOT-FOR PROFIT CORPORATION, MUST BE VACATED FOR LACK OF SUBJECT MATTER JURISDICTION.

A. The Final Judgment Erroneously Purports to Invalidate any Testamentary Instrument Not Submitted for Probate and Such Decree Must be Vacated.

B. The Chancery Division's Jurisdiction over New Jersey Trusts and Trustees Did Not Extend to Removal of a Director of a New York Not for Profit Foundation.

POINT III

SELVAGGI WAS IMPROPERLY APPOINTED AS GUARDIAN AD LITEM AND TEMPORARY TRUSTEE OF LAURA NILES ON THE *EX-PARTE*

APPLICATION OF PARKINSON, THIS APPOINTMENT PREJUDICED LAURA NILES AND BONO AND THEREFORE THE JUDGMENT MUST BE REVERSED.

A. The Ex-Parte Appointment of Selvaggi as Guardian at the Behest of Parkinson Was Not Authorized as a Matter of Law and The Appointment Cannot Stand.

B. Selvaggi's Selective Invocation of the Attorney Client Privilege and His Inaccurate Report Prejudiced the Rights of Laura Niles and Bono.

1. Selvaggi's Conduct in Waiving The Attorney-Client Privilege Prejudiced The Rights of Laura Niles.

2. Selvaggi's Conduct in Preparing a Guardian Ad Litem Report Which Was Inaccurate, His Refusal to Release His notes of the Interviews After Witnesses Certified Statements Ascribed to Them Were Inaccurate or Never Said, Caused The Court to Find a Prima Facie case of Undue Influence And Prejudiced Bono.

POINT IV

THE COURT BELOW ERRED IN SUMMARILY REMOVING BONO AS TRUSTEE PENDING FINAL DETERMINATION BECAUSE THERE WERE DISPUTED ISSUES OF MATERIAL FACT.

POINT V

THE DECISION TO ENTER DEFAULT WITHOUT PROPER NOTICE, AS REQUIRED BY RULE 1:6-3, THE FAILURE TO CONSIDER LESS DRASTIC REMEDIES, AND THE TOTAL EXCLUSION OF BONO AND HIS ATTORNEY FROM ANY PARTICIPATION IN THE PROOFS HEARING AND DAMAGES HEARING, VIOLATE HIS DUE

PROCESS DAMAGES HEARING AND HIS RIGHTS UNDER NEW JERSEY LAW AND REQUIRE REVERSAL.

B. The motion for Entry of Default Was Defective as a Matter of Law and the Application Should Have Been Summarily Denied.

C. The Lack of Sufficient Notice and an Opportunity to Be Heard in Person or Through Counsel Prior to the Entry of a Money Judgment Exceeding One Million Dollars Constituted a Deprivation of Bono's Rights to Due Process of Law. The Court Below Abused its Discretion by Failing to Consider Less Severe Sanctions and in Precluding Participation in the Damages Phase of the Trial.

POINT VI

THE DENIAL OF THE MOTION FOR JUDGE SEYBOLT'S RECUSAL IS REVERSIBLE ERROR BECAUSE JUDGE SEYBOLT HAD AN INTEREST IN THE OUTCOME OF THE CASE AND WAS LITIGATION AGAINST BONO IN THE FEDERAL CIVIL RIGHTS AND RICO CASE.

B. This Court Should Take Judicial Notice of Bono's 1983 and Civil RICO case Against Judge Seybolt When Considering Judge Seybolt's Refusal to Recuse Himself from This Case.

B. Judge Seybolt's interest in the Outcome of the Action He Presided Over, Coupled With His Taking a Position Concerning the Merits of Bono's Complaints About Him, Required His Recusal to Maintain Confidence in the Judiciary.

1. The requirement in Canon 3(c) of the Code of Judicial Conduct, Which Requires a Judge to Recuse Himself Whenever His Impartiality Might

Reasonably be Questioned, Is To Be Strictly Enforced and Any Doubts Resolved in Favor of Recusal.

2. A Reasonably Objective Observer or Member of the Public, Knowing All of the Facts About Judge Seybolt's Conduct After Becoming a Defendant in the Federal Lawsuit Might Question his Partiality and Therefore Recusal Was Mandated.

A. Judge Seybolt's Filing of a Motion to Dismiss Bono's Complaint and Taking a Position as to its Merits Would Reasonably be Perceived as His Taking a Position Against Bono and Aligning Himself With the Other Litigants Who Were Also Joined in the Federal Lawsuit.

B. Judge Seybolt's Complete and Drastic Change in His Perception of What the Videotape of Laura Niles Showed About her Condition, Which Occurred After He Received the Amended Complaint in the Federal Lawsuit Initiated by Bono, Are such That a Reasonable Observer Might Question His Impartiality.

C. The Extreme Rulings Made by Judge Seybolt Against Bono After He Filed The Federal Lawsuit Are Such That a Reasonable Objective Observer Might Question His Impartiality.

POINT VII

THE JUDGMENT SHOULD BE VACATED AND BONO GIVEN AN OPPORTUNITY TO LITIGATE THE UNDUE INFLUENCE ISSUE BEFORE A DIFFERENT JUDGE BECAUSE THE RECORD DEMONSTRATES THAT THERE IS MERIT TO BONO'S ASSERTION THAT THE INSTRUMENTS WERE THE PRODUCT OF LAURA NILES' FREE

WILL, WITH THE AID OF HER INDEPENDENT COUNSEL.

A. The Dispositions Made by Laura Niles Were Presumptively Valid and Enforceable.

B. Only Influence Which is So Strong as To Destroy the Free Agency of the Testator Can Rebut the Presumption of Validity of the Instruments that Person Signed.

C. Parkinson Failed to Establish that Each and Every Instrument and Will Which Parkinson Challenged Was the Product of Undue Influence.

1. Laura Niles' Mental Acuity, Strength of Will And Emotional Health Both Before And After The 1997 Florida Trip and Including The Times When The Documents In Question Were Executed Show that She Was Not The Victim of Undue Influence.

2. Laura Niles' Representation by Independent Counsel at the Time the Trust Amendments Were Carried Out Undermines Parkinson's Undue Influence Claim.

3. Laura Niles' Independent Complaints About Parkinson, Selby, and Lamb Demonstrate That Her Decision to Replace Them Was Not The Result of Undue Influence.

POINT VIII

THE AWARD OF MONEY DAMAGES MUST BE VACATED BECAUSE PARKINSON FAILED TO SHOW HE WAS DAMAGED AND IT WAS IMPROPER TO DIRECT SALVATORE BONO TO PAY ATTORNEY FEES INCURRED FOR REPRESENTATION OF LAURA NILES AND THE

TRUSTS, AND TO AWARD COMPENSATORY DAMAGES TO LAURA NILES, WHO WAS NOT A PARTY TO THE ACTION.

On appeal, Serena presents the following arguments in support of her appeal of our consideration:

POINT I

THE EVIDENCE BEFORE THE TRIAL COURT WAS INSUFFICIENT AS A MATTER OF LAW TO SUPPORT A FINDING OF UNDUE INFLUENCE AS TO THE DEVISE OF THE FLORIDA CONDOMINIUM.

POINT II

THE TRIAL COURT ERRED IN ASSESSING FEES AND COSTS AGAINST SERENA NILES.

In their cross-appeals, the Foundation and Parkinson present the following arguments:

THIS COURT SHOULD DIRECT THE TRIAL COURT TO ENTER JUDGMENT JOINTLY AND SEVERALLY AGAINST SAL BONO AND SERENA NILES IN THE AMOUNT OF $2, 987, 106.

A. The Estate Is Entitled to Restitution From the Bonos For All Legal Fees Incurred As A result of Their Undue Influence.

B. The Unauthorized Expenditures.

C. The Damages For The Commissions And The Accounting and Investigators' Fees Assessed Against Salvatore Bono Should be Affirmed For The Reasons Stated By The Trial Court; However, The Trial Court Erred By Not Assessing These Same Damages Against Serena Bono Niles.

After carefully reviewing the record in the light of the written and oral arguments presented by the parties, we conclude that the claims advanced by Salvatore and Serena are without sufficient merit to warrant extensive discussion in this opinion, *R.* 2:11-3(e)(1)(A) and (E), and we affirm substantially for the reasons articulated by Judge Seybolt in his thoughtful and comprehensive written opinions dated August 3, 1999 and January 10, 2000 and in his oral opinion delivered on March 24, 2000. The findings of the judge are supported by substantial, credible evidence contained in the record, *Rova Farms Resort v. Investors Ins. Co.*, 65 *N.J.* 474, 484 (1974), and his conclusions predicated on those findings are legally sound. *Lavin v. Hackensack Bd. of Educ.*, 90 *N.J.* 145, 151-53 (1982). We add the following.

Salvatore's argument that Parkinson had not standing to object to Salvatore's accounting, although not raised below, is without merit. Parkinson clearly had a right, and thus had a standing, to object to Salvatore's accounting. The litigation was commenced when Parkinson, as trustee of the Foundation, filed a verified complaint, seeking not only an allowance of the settlement of his account of the trust assets, but also seeking appointment of a guardian ad litem to protect Laura's interest from acts of improper influence by Salvatore and Serena, made possible because of Laura's frail health. Since Parkinson was responsible for the court's order directing Salvatore's accounting, Parkinson could not be deemed as a stranger or interloper to the action. As the person who for years had taken care of Laura's financial affairs and had acted as trustee and fiduciary, Parkinson had a direct stake in protecting Laura's estate from the consequences of Salvatore's manipulation and improper influence. Salvatore's reference and reliance on an analytical extrapolation from *N.J.S.A.* 3B:14-4 is both inappropriate and misplaced. There can be no question that Parkinson was an "interested person" and, as such, was clearly entitled by *R.* 4:87-8 to file exceptions to Salvatore's accounting.

Salvatore's arguments that the Probate Part lacked jurisdiction to invalidate Laura's 1997 will because only a probated will contest could have invoked the court's jurisdiction, is without merit. The 1997 will was vacated as a result of the court's determination that it's execution was not a product of Laura's own free will but, rather, the result of the undue influence of Serena and Salvatore. Nothing about these proceedings and subsequent findings invoked or required the probate procedures. Vacation of the 1997 will and the other documents was the logical remedy once the finding of undue influence was made. The court properly acquired jurisdiction over each aspect of Laura's affairs tainted by the undue influence.

Although it appears the trial court had no jurisdiction over the Niles Foundation, which was incorporated in the state of New York on August 14, 1997, the invalidation of the 1997 estate plan and documents, and reinstatement of the previous estate plan, deprived the 1997-created Niles Foundation of any interest in Laura's estate, as the 1992-created Foundation was the residual beneficiary of Laura's assets under 1992 will. Thus, although the trial court had no authority to remove Salvatore as a director of the 1997 New York charitable corporation, that entity no longer had a purpose, funding source, or link to Laura.

There was nothing improper in the appointment of Selvaggi as guardian ad litem for Laura. The procedures used conformed to applicable court rules. *See R.* 4:67; *R.* 4:83; *R.* 4:87-1(a). Additionally, as Laura's duly appointed guardian ad litem, Selvaggi clearly had the right to exercise or waive the attorney-client privilege Laura enjoyed as long as doing so was in her best interest. The record is clear that Selvaggi acted in Laura's best interest at all times.

Salvatore's reliance upon *Wolosoff v. CSI Liquidating Trust,* 205 *N.J. Super.* 349 (App. Div. 1985), to support his contention that his summary removal on September 24, 1998

as trustee pending final disposition was improper without and evidential hearing, is misplaced. Initially, we note that this claim is moot, because Salvatore was eventually permanently removed after a full plenary hearing in which he chose not to participate. In *Wolosoff, supra*, the trustees were permanently removed on the basis of affidavits and oral arguments. 205 *N.J. Super.* at 364-66. Here, Salvatore's initial removal on September 24, 1998, was temporary, and was largely based upon a comprehensive report from the guardian ad litem.

We also conclude that given Salvatore's conduct during the proceedings the trial court, the trial judge did not abuse his discretion in finding Salvatore in default, striking his pleadings, and entering judgment against him. Salvatore refused to appear for the continuation of his deposition, despite a court order requiring him to do so. The record is replete with other instances of Salvatore's lack of participation and cooperation with the court and counsel. The trial judge exercised remarkable restraint throughout and displayed a clear and constant intent to provide Salvatore ample and adequate opportunity to be heard. Salvatore's claims of inadequate notice are meritless; he made it clear that he had no intention of appearing before Judge Seybolt for any purpose. Salvatore's own actions and conduct decry his current complaints.

Although the trial judge probably should have permitted Salvatore's counsel to participate in the cross-examination of witnesses on the issue of damages, we find no prejudice to Salvatore in that regard. The record is clear that Salvatore wanted to discharge his counsel and did not authorize such participation. Moreover, Serena was in the same position as Salvatore with respect to the undue influence allegations; Serena's counsel fully cross-examined all of the witnesses as to both liability and damages.

We are satisfied Judge Seybolt properly exercised his sound discretion in denying Salvatore's application for recusal; recusal rests in the sound discretion of the trial judge

whose impartiality is challenged. *Panitch v. Panitch*, 339 *N.J. Super.* 63, 66 (App. Div. 2001); *Jadlowski v. Owens-Corning*, 283 *N.J. Super.* 199, 221 (App. Div. 1995), *certif. denied.*, 143 *N.J.* 326 (1996). The record more than adequately demonstrates that Judge Seybolt presided over this matter even-handedly, exhibiting no bias whatsoever. The record also clearly reflects that Salvatore's conduct in instituting the federal action was a tactic improperly designed to create a conflict where no existed and to obfuscate the proceedings.

The findings of the exercise of undue influence by Serena and Salvatore on Laura, and the imposition of fees, costs and surcharges against Serena and Salvatore are fully supported by the evidence contained in the record. Salvatore's claim that Parkinson was obliged to prove that he personally suffered monetary damages misconstrues that nature of the action. Parkinson was not seeking to recover for an injury to himself. Rather, his action was brought initially as a complaint to settle his accounting and for appointment of a guardian ad litem to investigate the necessity to protect Laura from undue influence. At no point was Parkinson seeking to redress a wrong committed against him personally. The proofs at the hearings were taken to resolve questions of whether the actions of Salvatore and Serena had resulted in damages to Laura's estate. Accordingly, Parkinson was under no obligation to prove that he had suffered damages personally.

The surcharges for attorneys' fees paid to the Fischbein Badillo and DeFeis, O'Connell and Rose law firms were proper because they were only incurred because Salvatore sought legal representations Laura, they did so at Salvatore's behest. Ultimately, those services were incurred not for Laura's benefit but for the benefit of Salvatore and Serena. Certainly, the incurrence of those fees constituted a breach of Salvatore's fiduciary duty and were recoverable.

Additionally, viewing the matter from the equitable perspective required by *Landsman, supra,* the exercise by Serena of undue influence to procure the results manifested by the 1997 invalidated documents, justified imposition of a joint and several obligation upon Serena for those counsel fees on equitable principles, notwithstanding her lack of "fiduciary" status. 319 *N.J. Super.* at 276.

It was clear from the evidence that Serena was the driving force behind the changes Laura made to her estate plan documents in 1997 so as to benefit herself, Salvatore and their family members. Moreover, it is Serena who initiated the undermining of Parkinson by her constant baseless comments, criticisms, and accusations of his financial treachery and dishonesty. We also find no basis or justification in the record for imposing upon Laura's trust the obligation upon Serena for those counsel fees on equitable principles, notwithstanding her lack of "fiduciary" status. 319 N.J. Super. at 276.

It was clear from the evidence that Serena was the driving force behind the changes Laura made to her estate plan documents in 1997 so as to benefit herself, Salvatore and their family members. Moreover, it is Serena who initiated the undermining of Parkinson by her constant baseless comments, criticisms, and accusations of his financial treachery and dishonesty. We also find no basis or justification in the record for imposing upon Laura's trust the obligation to pay Serena's counsel fees.

Parkinson and the Foundation contend the trial court assessed inadequate damages against Salvatore and Serena such that Laura's estate was not made whole. Although, in our view, the trial court's reference to Landsman, supra, as providing inadequate authority for imposition of all counsel fees against a purveyor of undue influence, was too narrow, the record submitted does not support plaintiffs' claim. Plaintiffs' application for the assessment of those counsel

does not disclose precisely what services rendered, for what purpose, and why the estate was obligated by the court to pay them.

We also accord deference to the trial judge's exercise of discretion in setting the amount of compensatory damages. The record contains only a list of the charges from the credit card statements indicating where the purchases had been made, and the amount of the checks written on Laura's account to cover those charges. No other details were made available concerning the precise nature of the purchases, some of which could reasonably have been necessary for Laura's maintenance. In the absence of more specific proof, we defer to the discretion of the the trial judge and his feel for the case.

Affirmed.

IN THE MATTER OF THE TRUST CREATED MARCH 31, 1992 BETWEEN LAURA J. NILES, GRANTOR, and GEOFFREY M. PARKINSON, TRUSTEE;

TRUST CREATED MARCH 31, 1992, BETWEEN LAURA J. NILES, GRANTOR, and GEOFFREY M. PARKINSON, TRUSTEE; and AMENDED JUDGMENT

TRUST CREATED AUGUST 23, 1994, BETWEEN LAURA J. NILES, GRANTOR, and GEOFFREY M. PARKINSON, TRUSTEE.

WHEREAS this matter was commenced by way of a Verified Complaint filed by Geoffrey M. Parkinson on January 20, 1998; and

WHEREAS on January 26, 199, the Laura J. Niles Foundation, Inc., filed a Verified Complaint as well, which was consolidated with the Parkinson Complaint by way of order dated March 12, 1999, and which was subsequently superceded by a First Amended Verified Complaint, and

WHEREAS by order of the Court, defendant Salvatore Bono submitted accountings in this action; and

WHEREAS the Court conducted a hearing on April 21, May 3-4, and July 12,-15 to consider said accountings and exceptions thereto filed by plaintiffs; and

WHEREAS at the conclusion of said hearing this Court entered an opinion and order dated August 24, 1999, in which it (a) found that Salvatore Bono had committed numerous acts of malfeasance, negligence, and self-dealing as trustee of Laura Niles, (b) permanently removed Salvatore Bono as trustee and fiduciary to Laura J. Niles; (c) removed Salvatore Bono as a director of the Niles Foundation, and (d) imposed sanctions against Salvatore Bono in the amount of $361, 800, without prejudice to plaintiffs' right to request further surcharges at the conclusion of the merits trial; and

WHEREAS on the first day of the plenary hearing on the merits of this matter (September 21, 1999), this Court found Salvatore Bono in default for a variety of reasons set forth on the record, including, in particular, his repeated failures to appear for court-ordered depositions and his failure to appear at trial; and

WHEREAS the Court thereafter proceeded with a plenary hearing on the merits of the allegations in the consolidated complaints, with the sole defendant being Serena Niles; and

WHEREAS this Court issued & Letter Opinion dated January 10, 2000 in which it made findings of fact and conclusions of the law based upon the testimony of the witnesses and the numerous exhibits into evidence; and

WHEREAS the Court found, among other things, that (a) as of January 1997, Laura Niles suffered from significant mental impairments that made her vulnerable to undue influence; (b) as of January 1997, Salvatore Bono and Serena Niles had developed a confidential relationship with Laura Niles; (c) suspicious circumstance exited sufficient to shift the burden of proof to the defendants, (d) Salvatore Bono and Serena Niles abused the trust and confidence Laura Niles placed in them by (among other ways) repeatedly telling her falsely that Mr. Parkinson was "cheating" her, "lying" to her, and "couldn't be trusted"; (e) Laura Niles, because of her mental and physical limitations at the time, was unable to resist these false and defamatory suggestions; (f) as a result of undue influence exerted upon her by Salvatore Bono and Serena Niles, Laura Niles signed the subject documents on May 21, 1997 and August 15, 1997, which, among other things, transferred control over her estate to Salvatore Bono; and (g) working in concert, Salvatore Bono and Serena Niles further abused the trust and confidence Laura Niles paced in them by, among other things, attempting further changes to her will, using her credit cards, checks and cash for

personal expenditures, obtaining improper and unauthorized compensation for Salvatore Bono, and using the funds in the trusts for wholly improper purchases; and

WHEREAS Salvatore Bono's and Serena Niles' conduct is the proximate cause of substantial economic harm to Laura Niles, including substantial legal fees paid during the pendency of this proceeding; and

WHEREAS plaintiff's complaints request the imposition of damages, fees and costs; and

WHEREAS it is appropriate and reasonable to require Salvatore Bono and Serena Niles to (a) bear some of the burden of the legal fees and costs paid in connection with this litigation, and (b) compensate the trusts for additional damages caused by their conduct; and

WHEREAS the Judgment previously entered by the Court in this matter on January 21, 2000, expressly provides that plaintiff's attorneys "may move before this Court by January 28, 200, on notice to all remaining parties, returnable Friday February 25, 2000, directing the defendants, Salvatore Bono and Serena Niles, to pay legal fees, costs and compensatory damages to the Laura J. Niles trusts"; and

WHEREAS plaintiffs having moved for such relief by a way of motion with notice to the remaining parties; and

FOR ALL of the reasons set forth in the Letter Opinion dated January 10, 2000 and for the additional reasons stated by the Court on the record on March 24, 2000;

ORDERED, ADJUDGED, and DECREED as follows:

A. Judgment is hereby entered in favor of plaintiffs Geoffrey M. Parkinson and the Laura J. Niles Foundation, Inc., defendants Salvatore Bono and Serena Niles with respect to all allegations of undue influence in the Verified Complaint of Geoffrey Parkinson and with

respect to Counts One and Two of the First Amended Complaint of the Laura J. Niles Foundation, Inc.

B. Declaratory and injunctive relief is hereby granted as follows:

(1) The "Modification and Restatement of Trust Agreement" dated May 21, 1997, the "Second Modification and Restatement of Trust Agreement" dated August 15, 1997, and all other wills, codicils, trust agreements, trust amendments, documents affecting powers of attorney, and other testamentary or trust documents signed by Laura J. Niles on or after January 1, 1997, are hereby declared NULL and VOID.

(2) The personal assets of Laura Niles and the assets held in trusts established by Laura Niles are hereafter governed by the provisions of the trust documents, wills, codicils, and other testamentary documents in effect as of January 1, 1997, except to the extent otherwise provided settlement agreements duly entered into and accepted by this Court in this matter.

(3) Geoffrey M. Parkinson is hereby reinstated ast the executor, trustee, and attorney-in-fact for Laura J. Niles, and he is hereby appointed guardian of Laura J. Niles, subject to being duly qualified by the Warren County Surrogate.

(4) Michael Selvaggi, Esq., is hereby discharged as temporary trustee and guardian of Laura J. Niles, and he is directed to submit an accounting within sixty (60) days of the entry of this order.

(5) In accordance with paragraph 8 of the consent order filed October 28, 1999, between plaintiffs, Edward Glynn, Esq., on behalf of the minors and Darryl Grosso, and Michael Selvaggi, Esq., the temporary trustee and guardian of Laura Niles, the Court hereby appoints Beacon Trust Company trustee of the trusts established thereunder and, by virtue of said appointment, relieves Geoffrey M. Parkinson of all duties and obligations as trustee for the trusts of the minors and Darryl Grosso arising from the prior Judgment entered on January 21, 2000. It is further ordered that upon the death of Laura Niles, the Surrogate shall pay out proceeds for the minors and Darryl Grosso, as directed by the consent order, to the trustee appointed herein, to be held in trust in accordance with the provisions of said consent order.

(6) A. Daniel D'Ambrosio, Esq., is hereby appointed to the Board of Directors of the Laura J. Niles Foundation, Inc. The Foundation shall take any and all steps necessary and proper to alter and/or amend the corporate papers to add M. D'Ambrosio to the Board of Directors, and to grant him full rights and privileges as a member of said Board.

(C) Fees, Costs, and Monetary Damages:

(1) A surcharge is assessed against Salvatore Bono in the amount of $805, 727, and is hereby final and immediately payable.

(2) In addition, Serena Niles is assessed a surcharge in the amount of $162, 014.

(3) In addition, Salvatore Bono and Serena Niles are jointly and severally liable to the Laura J. Niles Revocable Trust Created March 31, 1992, in the amount of $314, 282 for legal fees incurred in connection with this action.

(4) In addition, Salvatore Bono and Serena Niles are jointly and severally liable to the Laura J. Niles, for compensatory damages in the amount of $50,000.

E. This Amended Judgment shall and does he hereby supercede the Judgment previously entered in this matter on January 21, 2000.

F. A copy of this Order shall be served on counsel for all parties within 5 days of entry.

_____

Harry K. Seybolt, J.S.C.

APPENDIX C

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
WARREN COUNTY

DOCKET NO: P-98-043d

COHN LIFLAND PEARLMAN
HERRMANN & KNOPF, LLP
Attorneys for Salvatore A. Bono
Park 80 Plaza West One
Saddle Brook, New Jersey 07663
(201) 845-9600
Our File: 34, 405

IN THE MATTER OF THE TRUST
CREATED MARCH 31, 1992 BETWEEN
LAURA J. NILES, GRANTOR, and
GEOFFREY M. PARKINSON, TRUSTEE;

TRUST CREATED MARCH 31, 1992,
BETWEEN LAURA J. NILES, GRANTOR,
and GEOFFREY M. PARKINSON,
TRUSTEE; and

AMENDATORY ORDER

TRUST CREATED AUGUST 23, 1994,
BETWEEN LAURA J. NILES, GRANTOR,
and GEOFFREY M. PARKINSON,
TRUSTEE.

THIS MATTER having been brought to the attention of the Court by Cohn Lifland Pearlman Herrmann & Knopf, LLP,

counsel for defendant, Salvatore A. Bono; and the Court having previously entered and Order dated September 21, 1999 granting "judgment by default" and the Court having considered the arguments of counsel and for other good cause shown:

IT IS on this 30th day of September, 1999;

ORDERED:

1. That this Court's Order of September 21, 1999 entering judgment by default against defendant, Salvatore A. Bono, is hereby vacated; and it further ordered

2. That the pleadings of Salvatore A. Bono are hereby stricken and default is entered against him pursuant to R. 4:23-2(b)(3); and it is further ordered

3. That a copy of this Order shall be served on all counsel within 5 days from the date hereof.

_____

HON. HARRY K. SEYBOLT, J.S.C.

APPENDIX D

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISIONS OF LAW
RICHARD J. HUGHES JUSTICE COMPLEX
25 MARKET STREET
PO BOX 112
TRENTON, NJ 08625-0112
E-Mail: catinodon@law.dol.lps.state.nj.us
(609) 292-8150

November 29, 1999

Mr. Salvatore A. Bono, Pro Se
2227 86th Street
Brooklyn, NY 11214

Re: *Bono v. Barnosky, et al.*
C.A. No. 99-3688

Dear Mr. Bono:

This is to inform you that defendant Judge Harry K. Seybolt joins in the motion to dismiss your RICO allegations made by Farrell Fritz, P.C. on behalf of John J. Barnosky.

Thank you very much for your consideration.

Sincerely yours,

JOHN J. FARMER, JR.
ATTORNEY GENERAL OF
NEW JERSEY

By: _____
Don E. Catinello
Deputy Attorney General

c: All counsel of record
Clerk of the Court
The Honorable Thomas C. Platt, U.S.D.J.

APPENDIX E

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, *being twenty-one years of age*, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein

shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section??5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX F

SUPREME COURT OF NEW JERSEY

Docket No. 52, 881

IN THE MATTER OF THE TRUST CREATED MARCH 31, 1992, BETWEEN LAURA J. NILES, GRANTOR, and GEOFFREY M. PARKINSON, TRUSTEE;

TRUST CREATED MARCH 31, 1992, BETWEEN LAURA J. NILES, GRANTOR, and GEOFFREY M. PARKINSON, TRUSTEE; and

TRUST CREATED AUGUST 23, 1994, BETWEEN LAURA J. NILES, GRANTOR, and GEOFFREY M. PARLINSON, TRUSTEE.

On Petition for Certification for review of a final judgment of the Superior Court of New Jersey, Appellate Division, Entered March 14, 2002

Sat Below:

Hon. David S. Baime, P.J.A.D.
Hon. Robert A. Fall,
Hon. Francine I. Axelrod, J.J.A.D.

PETITION FOR CERTIFICATION AND APPENDIX ON BEHALF OF DEFENDANT-PETITIONER SERENA NILES

JOSEPH P. CASTIGLIA, ESQ.
Attorney for Defendant-Petitioner Serena Niles
155 Polifly Road
Hackensack, New Jersey 07601
(201) 342-1700

not in conflict with any other decision of a similar or higher court, is consistent with ordinary principles of review, and neither offends justice nor common sense.

CONCLUSION

Serena respectfully submits that for the reason set forth in her Petition, this Court should grant her Petition foe Certification and reverse the decision of the Appellate Division that decline to overturn that part of the trial court's judgment that set aside the intended devise of the real estate and imposed surcharges, fees and costs on her.

Serena also joins in those arguments presented by Bono in his Petition for Certification to the extent that they affect her.

Finally, Serena respectfully asks, for the reasons set forth, that this Court deny the Cross-Petitions for Certification.

Dated: April 26, 2002

Respectfully submitted,

/s/ Joseph P. Castiglia
JOSEPH P. CASTIGLIA, ESQ.
155 Polifly Road
(201) 342-1700

Attorney for Defendant-Petitioner

NOTICE OF PETITION FOR CERTIFICATION,
DATED APRIL 19, 2002

JOSEPH P. CASTIGLIA
Attorney at Law
155 Polifly Road
Hackensack, New Jersey 07601
(201) 342-1700
Attorney for Petitioner/Appellant
Serena Niles

SUPREME COURT OF NEW JERSEY
DOCKET NO. 52881

(APPELLATE DIVISION
DOCKET NO. A-4644-99-T1; NO. A-4649-99-T1)
Civil Action

In the Matter of the
Trust Created March 31, 1992 between
Layra J. Niles, Grantor, and Geoffrey M.
Parkinson, Trustee;

Trust Created March 31, 1992 between
Laura J. Niles, Grantor, and Geoffrey M.
Parkinson, Trustee; and

Trust Cteated August 23, 1994 between
Laura J. Niles, Grantor, and Geoffrey M.
Parkinson, Trustee

NOTICE OF PETITION FOR CERTIFICATION

TO: Clerk of the Supreme Court
Hughes Justice Complex
P.O. Box 970
Trenton, New Jersey 086250-0970

Clerk of the Appellate Division
Hughes Justice Complex
P.O. Box 006
Trenton, New Jersey 08625-0006

JOHN A. RIDLEY, ESQ.
GIBBONS DEL DEO DOLAN
GRIFFINGER & VECCHIONE, P.C.
One Riverfront Plaza
Newark, New Jersey 07102-5497

BRUCE L. SHAPIRO, ESQ.
DRINKER BIDDLE & SHANLEY, LLP
500 Campus Drive
Florham Park, New Jersey 07932-1047

WILLIAM J. MURRAY, ESQ.
MURRAY & KIMBALL, LLC
15 Warren Street
Hackensack, New Jersey 07601

PLEASE TAKE NOTICE that Serena Niles hereby petitions the Supreme Court of New Jersey for an Order certifying those portions of the judgment of the Appellate Division entered in the above matter on March 14, 2002, by which she is aggrieved. The filing fee of $175.00 is enclosed herewith.

Dated: Hackensack, New Jersey
April 19, 2002

/s/ Joseph P. Castiglia
JOSEPH P. CASTIGLIA
Attorney for Serena Niles